

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**IN RE: CHARLES EVANS TRUCKING, INC.
DEBTOR**

**CASE NO. 18-50885 KMS
CHAPTER 7**

**MOTION FOR AUTHORITY TO SELL
PROPERTY FREE AND CLEAR OF LIENS**

Chapter 7 Trustee, Kimberly R. Lentz (“Trustee”) files this Motion for Authority to Sell Property Free and Clear of Liens pursuant to §363(b) and §363 (f) of the *United States Bankruptcy Code*, Rules 6004, 2002(a)(2), 2002(c)(1) and 9014 of the *Federal Rules of Bankruptcy Procedure* and Miss. Bankr. L.R. 9014-1 as follows:

1. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1334. This Court has the statutory authority to enter a final order in connection with this matter pursuant to 28 U.S.C. §157(b)(2) (A), (N) and (O). This Court has the constitutional authority to enter a final order in connection with this matter.

2. Charles Evans Trucking, Inc. (“Debtor”) filed a petition for relief under Chapter 7 of the *Bankruptcy Code* on May 4, 2018. Kimberly R. Lentz is the duly appointed and acting trustee of the Debtor’s bankruptcy estate.

3. The Debtor owns the vehicles, equipment and trailers itemized on Exhibit “A” attached hereto which are valued at approximately \$623,000.00 (“Trucking Assets”). The Trucking Assets are subject to a lien in favor of the Bank of Wiggins.

4. The Trustee requests authority to sell the Trucking Assets to Big Level Trucking, Inc., a Mississippi corporation (“Purchaser”), for the purchase price of \$576,500.00.

5. The Trustee requests that the sale be free and clear of all liens, claims and encumbrances pursuant to 11 U.S.C. §363(f), except as set forth in Paragraph 6 below and with the exception of the lien held by the Bank of Wiggins’ lien in the approximate amount of \$480,000.00. Said lien is recognized as being valid and is expressly preserved and the debt secured by said lien

is to be assumed by the Purchaser, Big Level Trucking, Inc. In addition to the assumption by the Purchaser of the existing loan which will be renewed, extended and/or modified, the Bank of Wiggins will make a new loan to the Purchaser for the additional funds necessary to complete the proposed sale. Any costs of transferring title, any federal or state excise tax, highway tax, fuel, IFTA, petroleum tax or other taxes applicable to common carriers will be borne by the Purchaser. The bankruptcy estate will receive a net amount of \$101,500.00 without reduction of any kind.

6. Ramco, Inc. DBA Pinebelt Oil (“Pinebelt Oil”) is the Debtor’s only scheduled unsecured creditor. Prior to the filing of the Petition for Relief, Pinebelt Oil filed a civil action in the Circuit Court of Lamar County, Mississippi styled *Ramco, Inc. et. al. v. Charles Guy Evans & Sons, Inc. et. al.* Cause No:37:16cv086 (“State Court Action”)¹ against the Debtor and other Defendants, including the Purchaser. On account of the allegations of Pinebelt Oil in the State Court Action, including, but not limited to, allegations made after the filing of the State Court Action, and on account of any potential claims of the bankruptcy estate against the Purchaser and other persons and entities, in the event of entry a judgment in the State Court Action in favor of Pinebelt against Purchaser or in the event any claims are made against Purchaser by the Trustee, neither Pinebelt nor the Trustee shall have the right to levy, resort to or execute as to the Trucking Assets on account of the sale being free and clear of all liens, interests and encumbrances as to the Trucking Assets only.

7. The Bank of Wiggins, Pinebelt, the Debtor and Purchaser have consented to the sale on terms set forth herein and will approve and sign the order approving the sale.

1

The State Court Action was removed to the United States District Court for the Southern District of Mississippi and assigned No:2:18-cv-00081-KS-MTP. On August 1, 2018, the District Court entered an Order Granting Motion for Referral to Bankruptcy Court. The civil action was assigned Adversary Proceeding No. 18-06031.

8. The sale shall be closed within three business days of entry of an order approving the sale, unless the order is subject to a stay of the Bankruptcy Court, the District Court or the Fifth Circuit Court of Appeals. The sale shall be closed at 2505 14th Street, Ste. 500, Gulfport, Mississippi, 39501.

9. Section 363(b)(1) of the *Bankruptcy Code* provides that (after notice and a hearing) “the Trustee may use, sell or lease, other than in the ordinary course of business, property of the estate.” In addressing the standards of a § 363(b) sale, the Fifth Circuit has held:

A sale of assets under § 363, as implemented by rule 6004, requires notice and a hearing and is subject to court approval and must be supported by an articulated business justification, good business judgment, or sound business reasons (citing *In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986). A trustee has the duty to maximize the value of the estate (citing *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 353, 105 S. Ct. 1986, 85 L. Ed. 2d 372 (1985)). As a general matter, the trustee must demonstrate that the proposed sale price is the highest and best offer, though a bankruptcy court may accept a lower bid in the presence of sound business reasons, such as substantial doubt that the higher bidder can raise the cash necessary to complete the deal. (citing 3 COLLIER ON BANKRUPTCY P 363.02[1][f] (15th ed. rev. 2009)).

The Cadle Co. v. Mims (In re Moore), 608 F.3d 253, 263 (5th Cir. 2010). *See also In re VCR I, LLC*, 2018 WL 2094301 (Case No. 12-02009 EE, S.D. Miss. 2018).

10. The Trustee believes that the sale of the Trucking Assets on the terms set forth above is in the best interest of the bankruptcy estate, the creditors and all parties-in-interest and should be approved by the Court.

11. The Trustee requests authority to execute and deliver to the Purchaser conveyance and transfer documents necessary to consummate the transaction.

12. The Trustee requests this Court to authorize the consummation of the sale without subjecting the order to a stay of execution, as permitted under Rules 7062 and 6004(h) of the *Federal Rules of Bankruptcy Procedure*.

WHEREFORE, Kimberly R. Lentz, Chapter 7 Trustee, requests the Court to enter an order granting the relief requested above and further grant the Trustee all other relief to which she is entitled, given the premises.

Respectfully Submitted,

**KIMBERLY R. LENTZ, CHAPTER 7
TRUSTEE**

By: /s/ Kimberly R. Lentz
Kimberly R. Lentz

OF COUNSEL:

William J. Little, Jr., MSB No. 1287
Kimberly R. Lentz, MSB 8986
W. Jarrett Little, MSB No. 104812
Lentz & Little, PA
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CERTIFICATE OF SERVICE

I, Kimberly R. Lentz, do hereby certify that the following have been served electronically via ECF with a copy of the foregoing document:

United States Trustee: USTPRegion05.JA.ECF@usdoj.gov
Walter Newman, attorney for the Debtor: wnewman95@msn.com
Robert A. Byrd, attorney for Pinebelt Oil: rab@byrdwiser.com

I further certify that I mailed a true and correct copy of the foregoing document to:

Charles Evans Trucking, Inc.
P. O. Box 306
Wiggins, MS 39577

William Wessler, Esq.
Attorney for Bank of Wiggins
1624 24th Avenue
Gulfport, MS 39501

M. Garner Berry
Markow Walker, P.A.
Post Office Box 13669
Ridgeland, MS 39157

This the 10th day of October, 2018.

/s/ Kimberly R. Lentz
Kimberly R. Lentz

TRACTOR & TRAILER TITLE LIST

	Unit #	YEAR	MAKE	MODEL	BODY	VIN#	VALUE	NOTES	
Bulk Trailers									
1	7724	1981	FRUE	TRL	TL	1H4B04126BK015724	\$23,000	SOLD To Mobile Abrasives	March 2018 Funds went to 007W
2	7538	1975	BUIC	519	TL	5385345	\$17,000		
3	7163	1979	BUIC	102	TL	2163845	\$20,000		
4	7216	1979	BUIC	102	TL	2169045	\$20,000		
5	7341	1974	BUTL	IDE	TN	3416245	\$17,000		
6	7191	1972	BUTL	IDE	TN	1916245	\$16,000		
7	7876	1979	BUIC	102	TL	8760745	\$18,000		
8	7616	1980	UL	BUL	TL	A4000616	\$20,000	Wrecked	uninsured at the time of the wreck
9	7601	1978	FRUE	CY2	TL	0M2503601	\$18,000		

Pole Trailers									
10	8010	1983	LUCK	SP1	TL	1L01B452XD1061924	\$10,000		
11	8006	1986	HOME	TLR	TL	7574772645PLA	\$10,000		
12	8014	1986	HOME	POL	TL	M8615625TC	\$7,500	Wrecked	uninsured at the time of the wreck
13	8015	1987	HOME	WD	TR	M8610295TC	\$7,500		
14	8020	1988	HILL	POL	TL	M5A8764	\$7,500		
15	8011	1980	DATS	266	TL	0550X1080	\$7,500		

Lowboy Trailer									
16	8001	2003	PITY	K34	TL	5JYKB41772P030616	\$10,000		
17	8003	2004	EVAN	D45	TL	1J9Y145B640003500	\$15,000		

Dump Trailer									
18	1002	1991	PALM	TA2	TL	1P9245527MA003202	\$10,000		
19	1004	2003	HOME	-	Q	M503H41C090002831	\$6,500		

Flatbed Trailer									
20	5501	2000	UTLL	FLA	TL	1UYFS2486YA361501	\$7,500	Sold to Navistar Financial	March 2008 Funds went to ?????
21	5502	2000	UTLL	FLS	TL	1UYFS2488YA361502	\$7,500	Sold to Navistar Financial	March 2008 Funds went to ?????
22	5503	2000	UTLL	N/A	TR	1UYFS248XYA361503	\$7,500	Sold to Navistar Financial	March 2008 Funds went to ?????
23	5504	2000	UTLL	FLA	TL	1UYFS2481YA361504	\$7,500	Sold to Navistar Financial	March 2008 Funds went to ?????
24	5505	2000	UTLL	FL	TL	1UYFS2483YA361505	\$7,500	Sold to Navistar Financial	March 2008 Funds went to ?????
25	5506	2000	UTLL	FLA	TL	1UYFS2485YA361506	\$7,500	Sold to Navistar Financial	March 2008 Funds went to ?????

26	5801	2003	UT	N/A	TR	1UYFS24883A149501	\$10,500		
27	5802	2003	UT	N/A	TR	1UYFS248X3A149502	\$10,500		
28	5803	2003	UT	N/A	TL	1UYFS24813A149503	\$10,500		
29	5804	2003	UT	N/A	TR	1UYFS24833A149504	\$10,500		
30	5805	2003	UT	N/A	TL	1UYFS24853A149505	\$10,500		
31	5806	2003	UT	N/A	TR	1UYFS24873A149506	\$10,500		
32	5807	2003	UT	N/A	TR	1UYFS24893A149507	\$10,500		
33	5701	2001	UT	N/A	TR	1UYFS24821A667701	\$8,000		
34	5702	2001	UT	N/A	TL	1UYFS24841A667702	\$8,000		
35	5703	2001	UT	N/A	N/	1UYFS24861A667703	\$8,000		
36	5704	2001	UT	N/A	TL	1UYFS24881A667704	\$8,000		
37	5705	2001	UT	N/A	TR	1UYFS24811A667705	\$7,500		
38	5707	2003	UT	FLT	TL	1UYFS24843A997701	\$10,500		
39	5708	2003	UT	N/A	TL	1UYFS24863A997702	\$10,500		
40	5709	2003	UT	N/A	TL	1UYFS24883A997703	\$9,500		
41	5710	2003	UT	N/A	TL	1UYFS248X3A997704	\$9,500		
42	5711	2003	UT	N/A	TL	1UYFS24813A997705	\$9,500		
43	5712	2003	UT	N/A	TR	1UYFS24833A997706	\$9,500		

Van Trailer									
44	9112	2000	UT	NA	TR	1UYVS2537YP110112	\$7,500	Wrecked	uninsured at the time of the wreck
45	9603	1999	UT	NA	TR	1UYVS2533XP859603	\$8,500	Wrecked	uninsured at the time of the wreck

Cattle Trailer									
46	9998	1997	MERR	TRL	TL	1MT2N5022VH010912	\$20,000		

Trucks									
47	3180	2007	PTRB	379	DS	1XP5DB9X07N736180	\$42,500		
48	3409	2003	PTRB	379	DS	1XP5DB9X33N596409	\$24,925		
49	3609	2007	PTRB	379	DS	1XP5DB9X37N688609	\$42,500		

Total Asset Value: \$623,425.00

Big Level Trucking Offer for Assets listed above: \$576,658.13 As of 9/27/18

Bank of Wiggins Line of Credit/Loan #89802500 Principle Balance: \$475,211.64 As of 9/27/18

Equity: \$101,456.49

EXHIBIT

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